90-895

Supreme Court, U.S.
FILED
NOV 21 1990
JOSEPH F. SPANIOL, JR.
CLERK

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

G. MURRAY TURNER, MULHALL TURNER & HOFFMAN, formerly known as MULHALL TURNER HOFFMAN CLAY & TRIPLETT — PETITIONER

VS.

LEON JONES, SR.
UNITED STATES OF AMERICA — RESPONDENTS

PETITION FOR WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

PETITION FOR WRIT OF CERTIORARI

C. FRED PARTIN
Attorney of Record
THOMAS E. CLAY, P.S.C.
2000 Kentucky Home Life
Louisville, KY 40202
(502)584-1500

61

QUESTIONS PRESENTED

1. Whether the 22 month delay in instituting a forfeiture action under state law deprived the Petitioner of due processes of law.

2. Whether the Commonwealth of Kentucky's forfeiture statute, KRS 218A.270 is unconstitutional.

LIST OF PARTIES

Jefferson County Police Department
by Leon E. Jones, Chief

William T. Warner
Conliffe, Sandman, Gorman & Sullivan
621 W. Main Street
Louisville, KY 40202

N. Scott Lilly
1001 Fiscal Court Bldg.
Louisville, KY 40202

United States Department of Justice
Tax Division (IRS)
Stuart D. Gibson
P.O. Box 227
Ben Franklin Station
Washington, D.C. 20044

Gary Allen
United States Department of Justice
Appellate Section Tax Division
P.O. Box 502
Washington, D.C. 20044

Fred Cowan
Attorney General
State Capitol Bldg.
Frankfort, KY 40601

United States Attorney's Office
Joseph M. Whittle
510 W. Broadway
Tenth Floor
Bank of Louisville Bldg.
Louisville, KY 40202

Soliciter General
Department of Justice
Washington, D.C. 20530

G. Murray Turner

Thomas E. Clay, P.S.C.
C. Fred Partin
2000 Kentucky Home Life
Louisville, KY 40202

TABLE OF CONTENTS

QUESTIONS PRESENTED	1
LIST OF PARTIES	2
TABLE OF CONTENTS	4
STATEMENT OF POINTS AND AUTHORITIES	5
OPINION BELOW	7
STATEMENT OF JURISDICTION	7
CONSTITUTIONAL PROVISION INVOLVED	8
STATEMENT OF THE CASE	8
REASONS FOR GRANTING WRIT	16
CONCLUSION	26
APPENDIX	

STATEMENT OF POINTS AND AUTHORITES

Barker v. Wingo, 407 U.S. 514
1972 17

Calero-Toledo v. Pearson Yacht
Leasing Company, 416 U.S. 663
94 S.Ct. 2080, 40 L.Ed.2d 452
(1974) 22

People v. Beard, 12 P.2d 941
(Cal. 1932) 24

Security Trust Co. v. Lexington,
203 U.S. 363, 27 S.Ct. 87, 51
L.Ed. 204 25

State v. Matheson, Wash., 524
P.2d 388 (1974) 24

State v. Miller, 248 N.W.2d
377 (S.D. 1976) 23

State v. One(1) 1972 Mercury
Capri, etc., 537 P.2d 763 (1975) 22

U.S. v. $8,850, 461 U.S. 555
(1983) 14, 16

U.S. v. Thirteen (13) Machine
Guns and One (1) Silencer, 689
F.2d 861 (9th Cir. 1982) on
rehr'g 726 F.2d 535 (9th Cir.
1983) 20

28 USC Section 1291 15

Fed.R.Crim.P. 41(e) 18

NO._____

IN THE
SUPREME COURT OF THE UNITED STATES
OCTOBER TERM 1990

LEON E. JONES, SR. PETITIONER

UNITED STATES OF AMERICA

VS.

ONE HUNDRED NINETY-THREE
THOUSAND THREE HUNDRED
EIGHTY SEVEN DOLLARS AND
SIXTY SEVEN CENTS, ET AL.

and

G. MURRAY TURNER, MULHALL,
TURNER & HOFFMAN, formerly
known as MULHALL, TURNER,
HOFFMAN, CLAY & TRIPLETT RESPONDENT

PETITION FOR WRIT OF CERTIORARI TO THE SUPREME COURT OF THE UNITED STATES

Petitioner, G. Murray Turner, respectfully prays that this Court issue its Writ of Certiorari to review the opinion and order of the United States Court of Appeals for the Sixth Circuit entered on the 23rd day of August, 1990.

OPINION BELOW

The order and opinion of the United States District Court for the Western District of Kentucky was rendered on June 7, 1988. (Appendix A). The order of the United States Court of Appeals for the Sixth Circuit was rendered on August 23, 1990. (Appendix B) The opinion of the Jefferson Circuit Court, Division 13, issued prior to this cases removal to the Federal Court is not contained in the appendix.

STATEMENT OF JURISDICTION

Jurisdiction of this Court is invoked pursuant to 28 USC section 1254 as the decision sought to be reviewed on petition for certiorari is from the

decision of the United States Court of Appeals for the Sixth Circuit rendered August 23, 1990.

CONSTITUTIONAL PROVISION INVOLVED

The Fourteenth Amendment to the United States Constitution states in part: "no state shall make or enforce any law which shall abridge the privileges or immunities of Citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law;"

KRS 218A.270 is contained in the appendix.

STATEMENT OF THE CASE

On March 1, 1982, officers of the Jefferson County Police Department obtained warrants for the search of two premises located in Jefferson County, Kentucky. These warrants were executed

on March 2, 1982. These searches uncovered, inter alia, the sum of $193,387.67. Said sums were seized from William and Mona Ragland and others on March 2, 1982.

The Raglands obtained the services of G. Murray Turner, an attorney in Louisville, Kentucky. As a part of the fee for Turner's services the Raglands agreed to assign all their right, title and interest to these funds and to other funds not at issue in this case to the Petitioner herein. The individuals who had retained the Petitioner were eventually convicted and sentenced in accordance with the plea agreements negotiated by him.

During the pendency of the criminal action the Defendants filed a

motion for the return of the property at issue here. The Jefferson County Police Department opposed the motion indicating that it held the sums merely as an agent for the United States. The motion for a return of the property was denied.

Almost two years after these sums of money were seized from the criminal Defendants the Jefferson County Police Department filed their complaint for forfeiture pursuant to KRS 218A.270, the state forfeiture statute existing at that time. (Exhibit C). The Chief of the Jefferson County Police Department was the named Plaintiff despite the fact the County had previously indicated it held the property merely as an agent for the United States.

The state forfeiture statute had no provision requiring a full and prompt hearing and further contained no provision which would statutorily vest title in the items seized in the Commonwealth of Kentucky at the time the unlawful conduct occurred, i.e., a relation back provision. The forfeiture complaint was filed in the Jefferson Circuit Court, Division 12, Hon. Edwin Schroering Jr., Judge.

Petitioner's amended answer to the forfeiture raised the affirmative defenses that (1) the forfeiture action was not timely initiated and that such delay denied the claimants the due process of law, and (2) that the state forfeiture statute itself was unconsti-

tutional as violative of the Fourteenth Amendment to the United States Constitution. No Court has certified to the Commonwealth of Kentucky Attorney General that the constitutionality of KRS 218.270 has been drawn into question.

The Jefferson Circuit Court issued conclusions of law on March 14, 1984 (amended May 8, 1984). That Court's primary findings were:

1. That the Jefferson Circuit Court had jurisdiction over the res pursuant to KRS 218A.270(F).

2. That the money should be forfeited pursuant to KRS 218A.270.

The Jefferson Circuit Court continued the case after making these initial findings to determine the interest of the Petitioner and the United

States (IRS) in the sums. However before any additional hearings could be held the Internal Revenue Service filed to remove this action to the United States District Court for the Western District of Kentucky pursuant to 28 USC section 1441 et. seq. This lateral transfer of the case occurred in December of 1984. The District Court assumed the case in the same status it existed in the state Court.

The United States District Court for the Western District of Kentucky in June of 1988, issued its memorandum, opinion and order on this case. (Exhibit B). That order vested title to the money in the Jefferson County Police Department. The District Court did not address the constitutional issues raised

by the Petitioner in his answer to the forfeiture suit.

The District Court's opinion indicated that a federal Court on a removal petition "takes the case up where the state Courts left off." See District Court's memorandum of June 7, 1988, at page 5. The Court did not consider the constitutional defects in the statute or the fact that the 22 month delay was violative of due process of law. The District Court's opinion did not address the factors delineated in U.S. v. $8,850, 461 U.S. 555 (1983) to determine if the delay was justified. The Jefferson Circuit Court similarly did not address these factors in its findings of March 14, 1984.

The District Court's determination regarding title to the money was based solely on an evaluation of the law of assignments. Since the assignments occurred subsequent to the date that the monies were seized, the Court found the assignments themselves were invalid and that the forfeiture was therefore valid.

An appeal was taken to the United States Court of Appeals for the Sixth Circuit. Jursidiction was based upon 28 USC section 1291. This petition for a writ of certiorari seeks review of only one argument raised to the Sixth Circuit, that is whether the claimants were denied the due process of law in this forfeiture proceeding.

REASONS FOR GRANTING THE WRIT

This writ should be granted because every lower court which heard this case did not follow the mandates of U.S. v. $8,850, 461 U.S. 555, (1983) by inquiring into the reasons for the 22 month delay in filing the forfeiture action.

In the case of U.S. v. $8,850, 461 U.S. 555, (1983) this Court required the application of a four part balancing test to determine whether the delay in filing a forfeiture complaint denied a claimant his rights to due process of law. The requirement for the application of the four part test is triggered when there is a substantial delay in the filing of a forfeiture action. In

$8,850 this Court found a delay of substantially less duration then the delay at issue here to be "quite significant" and sufficient to trigger an application of the balancing test. Id.

The state forfeiture statute at issue here permitted this delay because the statute itself did not have a provision for a prompt hearing. In fact it did not even contain the requirement for any hearing whatsoever.

The twenty-two month delay was of sufficient length as to require application of the four part test enunciated in $8,850. That test was originally stated in Barker v. Wingo, 407 U.S. 514 (1972). Four factors must be reviewed to determine if a delay in instituting a forfeiture action constituted a denial of due process.

Of primary importance is the length of the delay, here 22 months. If the 18 months in $8,850 was sufficient to trigger an inquiry, then an even longer delay must also be found sufficient. The second factor is the reason for the delay. The lower Courts which have ruled in this case have not even addressed this issue. The reason the government delayed almost two years in filing the forfeiture action were never explained or justified by any findings.

The third factor to be evaluated is whether the claimant asserted his right to the property. This Court indicated that the filing of a motion pursuant to Fed.R.Crim.P. 41(e) is a sufficient assertion of a claimant's

right to seized property. The Defendants in the related criminal action filed such a motion for a return of this property. That motion was denied by the trial Court.

The fourth factor to be considered is the prejudice to the claimants. While money is not a wasting asset, the claimants have been significantly burdened by being deprived of this substantial sum of money for such a long period of time before even a forfeiture action was even initiated.

At no point did any of the lower Courts address the four factors of the Barker v. Wingo balancing test. No Court has been able to review the record and state unequivocally that after balancing the Barker v. Wingo factors

the claimant was not deprived of the due process of law in the operation of this forfeiture action.

In $8,850 there was a substantial record upon which the District Court could base its findings that the delay was justified. No such record exists in this case. Further there was an assertion of right to the property in this case. If for no other reason than the fact that the lower Courts did analyze the $8,850 factors this case should be remanded to the District Court for a proper hearing and for a determination if the delay is justifiable. As was held in U.S. v. Thirteen (13) Machine Guns and one (1) Silencer, 689 F.2d 861 (9th Cir. 1982) on rehr'g 726 F.2d 535 9th Cir. (1983) "[T]he weighing

is initially a matter for the District Court, upon such record as it deems appropriate, with the result to be set forth in a manner to permit subsequent review." 13 Machine Guns, 726 F.2d at 536 (emphasis added). The 13 Machine Guns Court remanded that case in light of this Court's opinion in $8,850.

II. THE WRIT SHOULD BE GRANTED BECAUSE THE COMMONWEALTH OF KENTUCKY'S FORFEITURE STATUTE IS IN AND OF ITSELF UNCONSTITUTIONAL.

Kentucky's forfeiture statute contains no provision for a notice and a hearing to alert potential claimants of their rights regarding forfeitures and forfeited property. Further the statute contains no provision vesting title in the property to the seizing agency as of the time the unlawful conduct occurred. Because this statute lacks these funda-

mental provisions, the statute is, in and of itself, unconstitutional.

Many other jurisdictions have addressed this or similar issues. In State v. one (1) 1972 Mercury Capri, etc, Wash., 537 P.2d 763 (1975) the Supreme Court of Washington found that a state statute which failed to provide for a notice of hearing concerning the validity of the seizure, either pre or post seizure, was in and of itself unconstitutional. That case was distinguished from the Calero-Toledo v. Pearson Yacht Leasing Company, 416 U.S. 663 94 S.Ct. 2080, 40 L.Ed.2d 452 (1974) by the fact that the Puerto Rican statute involved in the Calero-Toledo case required the potential claimant be given notice within ten days of the date of

the seizure. Thereafter if a challenge was not made within fifteen days the yacht would be forfeited. The statute involved in the Mercury Capri case contained no provision for a hearing just as the statute involved in this case contains no provision for a hearing, either pre or post seizure.

In State v. Miller, 248 N.W.2d 377 (S.D. 1976) a South Dakota statute was similarly found to be unconstitutional based upon its lack of a notice and hearing requirement subsequent to the seizure. The Miller Court also stated that in order to satisfy due process, it is the statute itself which must contain the notice and hearing provisions. It did not matter that the

South Dakota rules of civil procedure supplied the missing notice and hearing requirements.

In State v. Matheson, Wash., 524 P.2d 388 (1974) the Supreme Court of Washington determined that even if a claimant receives notice of a hearing regarding the forfeiture, that alone is insufficient if the statute itself contains no provision for a notice and hearing post seizure.

The State of California, as far back as People v. Beard, 12 P.2d 941 (Cal. 1932), recognized that the failure of a statute to include a provision for a notice and a hearing concerning a forfeiture violated the due process of law. The Beard court cited Security Trust Co. v. Lexington, 203 U.S. 363, 27

S.Ct. 87, 51 L.Ed. 204 for the additional proposition that even if "in the matter of grace or favor notice may be given," such would not be sufficient to save the statute from constitutional attack. "It is not what notice, uncalled for by the statute, the [claimant] may have received in a particular case that is material but the question is whether any notice is provided for by the statute." Beard, supra, citing Security Trust Co., supra.

The Kentucky forfeiture statute at issue in this case simply does not contain a provision for either a pre or post seizure hearing to determine whether the property seized should be forfeited. Because this statute is lacking this crucial requirement it does

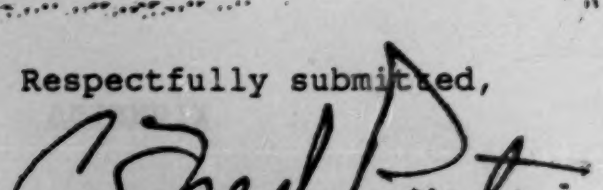
not comport with the notions of due .PA process enunciated in the Fourteenth Amendment to the United States Constitution. It is for this reason that this statute is unconstitutional. Therefore its application as precedent for the forfeiture of the sums involved herein is unconstitutional. Justice demands that the order of forfeiture be reversed and this case be remanded with orders that the United States District Court for the Western District of Kentucky order the sums returned to the claimant.

CONCLUSION

Wherefore for all the foregoing reasons counsel would respectfully request this Court to grant the Writ sought. Granting this Writ will permit the Court to clarify and establish the

rules which must be adhered to in determining the constitutionality of forfeiture actions.

Respectfully submitted,



C. FRED PARTIN
THOMAS E. CLAY, P.S.C.
2010 Kentucky Home Life
Louisville, KY 40202
(502)589-5051

br/$$$

APPENDIX

218A.270. Substances and property, subject to forfeiture - Procedure and exemptions. - (1) the following are subject to forfeiture:

(a) All controlled substances which have been manufactured, distributed, dispensed, possessed, being held or acquired in violation of this chapter;

(b) All raw materials, products and equipment of any kind which are used or intended for use, in manufacturing, compounding, processing, delivering, importing, or exporting any controlled substance in violation of this chapter;

(c) All property which is used, or intended for use, as a container for property described in paragraph (a) or (b) of this subsection;

(d) All conveyances, including aircraft, vehicles or vessels, which are used, or intended for use, to transport, or in any manner to facilitate the transportation, for the purposes of sale or receipt of property described in paragraph (a) or (b) of this subsection, but:

1. No conveyance used by any person as a common carrier in the transaction of business as a common carrier is subject to forfeiture under this section unless it appears that the owner or other person in charge of the conveyance is a consenting party or privy to a violation of this chapter;

2. No conveyance is subject to forfeiture under this section by reason of any act or omission established by

APPENDIX
p. 1

the owner thereof to have been committed or omitted without his knowledge or consent;

3. A forfeiture of a conveyance encumbered by a bona fide security interest is subject to the interest of the secured party if neither had knowledge of nor consented to the act or omission;

4. The forfeiture p[provisions of the paragraph shall not apply to any offense relating to marijuana.

(e) All books, records, and research products and materials, including formulas, microfilm, tapes, and data which are used, or intended for use, in violation of this chapter.

(f) All moneys acquired from transactions involving property as described in paragraphs (a) and (b) of this subsection and found upon th person or premises of the defendant.

(2) Property subject to forfeiture under this chapter may be seized by any law enforcement agency upon process issued by any court having jurisdiction over the property. Seizure without process may be made if:

(a) The seizure is incident to an arrest or a search under a search warrant;

(b) The property subject to seizure has been the subject of a prior judgment in favor of the state in a criminal injunction or forfeiture proceeding based upon this chapter;

APPENDIX
p. 2

(c) The law enforcement agency has probable cause to believe that the property is directly or indirectly dangerous to health or safety; or

(d) The law enforcement agency has probable cause to believe that the property was used or is intended to be used in violation of this chapter.

(3) Property taken or detained under this section shall not be subject to replevin, but is deemed to be in the custody of the law enforcement agency subject only to the orders and decrees of the court having jurisdiction over the forfeiture proceedings. When property is seized under this chapter, the law enforcement agency may:

(a) Remove the property to a place designated by it; or

(b) Take custody of the property and remove it to an appropriate location for disposition in accordance with law.

(4) When property is forfeited under this chapter the law enforcement agency may:

(a) Retain it for official use;

(b) Sell that which is *not* required to be destroyed by law and which is not harmful to the public. The proceeds shall be used for payment of all proper expenses of the proceedings for forfeiture and sale, including expenses of seizure, maintenance of custody, advertising and court costs. The balance shall be paid to the state treasurer for deposit to the general fund.

(5) Controlled substances listed in Schedule I that are possessed, transferred, sold or offered for sale in violation of this chapter are contraband and shall be seized and summarily forfeited to the state. Controlled substances listed in Schedule I, which are seized or come into the possession of the state, the owners of which are unknown, are contraband and shall be summarily forfeited to the state.

(6) Species of plants from which controlled substances in Schedules I and II may be derived which have been planted or cultivated in violation of this chapter, or of which the owners or cultivators are unknown, or which are wild growths, may be seized and summarily destroyed or forfeited to the state.

(7) The failure, upon demand by the law enforcement agency or its authorized agent, of the person in occupancy or in control of land or premises upon which the species of plants are growing or being stored, to produce an appropriate a registration or proof that he is the holder thereof, constitutes authority for the seizure and forfeiture of the plants.

(8) All substances, machinery or devices used for the manufacture, packaging, repackaging, or marking and books, papers, and records, and all vehicles owned and used by the seller or distributor for the manufacture, distribution, sale or transfer of substances in violation of KRS 218A.350 shall be

seized and forfeited to the state. Substances manufactured, held, or distributed in violation of KRS 218A.350 shall be deemed contraband. (Enact. Acts. 1972, ch. 226, section 29; 1978, ch. 124, section 1, effective June 17, 1978; 1982, ch. 419, section 3, effective July 15, 1982.)

Opinions of Attorney General. Where a law enforcement agency has retained a forfeited vehicle for its official use, it cannot trade that vehicle for another vehicle but if the law enforcement agency sells a forfeited vehicle, it may charge for storage of the vehicle and deduct such storage charges from the proceeds received from the sale of the vehicle. OAG 78-20.

APPENDIX
p. 5

NO. 84CI00406 JEFFERSON CIRCUIT COURT
TWELFTH DIVISION

E.G. HELM, JR., in his official capacity as Chief of the Jefferson County, Kentucky Police Department PLAINTIFF

VS.

ONE HUNDRED NINETY-THREE THOUSAND THREE HUNDRED EIGHTY-SEVEN DOLLARS AND SIXTY-SEVEN CENTS ($197,387.67) DEFENDANT

ORDER

This case came on for a trial March 12, 1984, on plaintiff's action to forfeit certain cash pursuant to KRS 218A.270. The plaintiff was represented by the Honorable William T. Warner. The only defendant who answered or appeared was the Honorable Charles Turner appearing for G. Murray Turner, assignee

APPENDIX
p. 6

of James W. Ragland, and the Honorable Michael Spalding, Assistant U.S. Attorney, who appeared on behalf of the Internal Revenue Service.

The plaintiff announced ready but the defendant, Turner, advised the Court that he desired to have the case reassigned in order the G. Murray Turner could appear; the latter being in trial in another case. All parties present then agreed that this case may proceed to hearing reserving ruling on any interest in the money, if any, claim by G. Murray Turner, assignee of James Ragland and the United States of America (Internal Revenue Service). All parties being in agreement, the Court sustained the motion to proceed with the hearing.

APPENDIX
p. 7

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

BOBBY CROUCH, ET AL.
Plaintiffs

v. NO. C84-1271-L(B)

ONE HUNDRED NINETY-THREE THOUSAND THREE HUNDRED EIGHTY-SEVEN DOLLARS AND SIXTY-SEVEN CENTS, ET AL.
Defendants

ORDER

For the reasons set forth in the memorandum filed this date,

IT IS ORDERED that the title to $193,387.67, properly seized by the Jefferson County Police on March 1, 1982, is vested in Bobby Crouch, Chief of the Jefferson County Police, and the claims of the United States (IRS) and G. Murray Turner be and they hereby are dismissed with prejudice.

APPENDIX
p. 8

There is no just reason for delay, and this is a final and appealable order.

This 7th day of June, 1988.

/s/THOMAS A. BALLANTINE, JR.
United States District Judge

copies to counsel

APPENDIX
p. 9

FINDINGS OF FACT

On March 1, 1982, Jefferson County Detective, Gary Epperson, executed a search warrant on real estate located at 8105 Thelma Lane and also at 9110 Linn Station Road, also of Jefferson County, Kentucky. This search was the culmination of an investigative effort conducted by the Kentucky State Police, the Jefferson County Police Department and other authorities which had begun in the latter part of 1981.

The investigation, conducted by Gary Epperson, disclosed that there was a drug operation which worked interstate. Drugs (cocaine and marijuana) were sent to Kentucky on consignment from Florida to Mr. James Ragland and

his friends. These drugs would be distributed by Mr. Ragland to others who would retail them to persons on the street. When the drugs were purchased, the money would then flow back through the retailers to Mr. Ragland, who in turn would forward the money to his contacts in Florida. The investigation showed that Ragland used several briefcases to carry the money. The money would be a bundle in $1,000 packages and then the $1,000 packages would in turn be bundled together to make a package of $5,000. This money was wrapped in this fashion apparently to facilitate transfer. The investigation showed that Mr. Ragland's operation was conducted out of the residences located at Thelma Lane and Linn Station Road.

The investigation further showed that the operation had been conducted over a period of two (2) years and had grossed somewhere in the neighborhood of $3,000,000 or $4,000,000.

On the morning of the search, the police made entry by warrant to the address at 8105 Thelma Lane. At that location, the officers found the following:

1. A briefcase containing $115,000. Packages were wrapped first in $1,000 bundles and then in $5,000 packages. The briefcase had a combination lock and it was found underneath a bed in the bedroom occupied by Ragland's sister and her boyfriend, Larry Suddeth. Underneath the same bed, there was

another identical briefcase which contained $39,480. This was wrapped similarly to the money wrapped in the first briefcase.

2. An additional $21,876 was found in a dresser drawer in the same room. Mixed with this money, there were receipts for a gun and travel receipts indicating travel from Jefferson County to Florida.

3. In the same dresser, the police found $215.00 in loose cash; $464 in Mr. Suddeth's wallet and $24.67 (coins) in a bank bag located in an adjacent room.

The total sum found at this address was $220,579.67.

In an adjacent room, the police discovered six (6) pounds of 99%

pure cocaine and five-hundred (500) pounds of marijuana. There were plastic bags and also a large box of manitol which is commonly used to dilute cocaine.

On the same day, a search warrant was executed by Detective Gary Epperson and others on the premises known as 9110 Linn Station Road which was occupied by one Billy Ragland and Mona Ragland, his wife. In the execution of the search warrant, many records concerning the drug operation were seized and also the following cash:

1. In Mona Ragland's purse, the sum of $1,292.

2. On a nightstand in the bedroom, numerous bills in denominations

of 20's, 10's, 5's and others totaling $8,600.

3. In the chest of drawers in the bedroom which contained a blue book and powder identified as cocaine together with case in the sum of $986.

4. In Ragland's blue jeans in bedroom, the sum of $2,500.

The total sum found at this address was $13, 588.00.

On the same day of the searches as set out above, the Jefferson County Police had under surveillance a vehicle that was operated by one Robert Lyon. This automobile had been seen at the Thelma Lane address, had come out of the garage where certain drugs were found and was stopped by the police pursuant to the search warrant. Upon

searching the vehicle, 150 pounds of marijuana was found in the trunk of the car together with one-quarter ounce of cocaine and the sum of $2,740 in cash. This sum is a subject of the forfeiture action.

The Court finds that on March 1, 1982, the Jefferson County Police Department seized monies acquired from transactions involving control substances, including cocaine, which were being dispensed and distributed through the locations known as 8105 Thelma Lane and 9110 Linn Station Road located in Jefferson County, Kentucky.

The Court further finds that these monies were found upon the person and premises of the defendants, James W.

Ragland, Billy Ragland, Mona Ragland, Larry Suddeth, Robin Ragland and Robert Lyons, all persons involved in transactions with controlled substances proscribed per KRS 218A.270.

CONCLUSIONS OF LAW

1. The Court has jurisdiction over the persons and property including the $197,387.67 herein. (KRS 218A.270)(F).

2. That the $197,387.67 seized by the Jefferson County Police from the premises at 8105 Thelma Lane and 9110 Linn Station Road and from the person of Robert Lyon should be forfeited pursuant to KRS 218A.270 subject however, to any interest if any therein by G. Murray Turner, as assignee of James William Ragland and Mona F. Rag-

land, and any interest claimed in said money by the United States of America.

ORDER

1. The sum of $197,387.57 seized by the Jefferson County Police on March 1, 1982, be and the same is hereby forfeited to the Commonwealth of Kentucky pursuant to KRS 218A.270, subject to any interest in said property as may be held by G. Murray Turner, assignee of James William and Mona F. Ragland, and by the United States of America (Internal Revenue Service).

2. This matter is set down for a hearing before the Court, without a jury, on May 17, 1984, at 10:00 a.m. to determine what interest, if any, that G. Murray Turner and/or the United

States of America may have in the

$197,387.67.

/s/EDWIN A. SCHROERING, JR., JUDGE
Jefferson Circuit Court,
12th Division

DATE: March 14,

Copy to:

William T. Warner
Charles Turner/G. Murray Turner
Michael Spalding

APPENDIX
p. 19

UNITED STATES DISTRICT COURT
FOR THE WESTERN DISTRICT OF KENTUCKY
AT LOUISVILLE

BOBBY CROUCH, ET AL.
Plaintiffs

v. NO. C84-1271-L(B)

ONE HUNDRED NINETY-THREE THOUSAND THREE HUNDRED EIGHTY-SEVEN DOLLARS AND SIXTY-SEVEN CENTS, ET AL.
Defendants

MEMORANDUM

On January 17, 1984, E.G. Helm, Jr.,[1] formerly the Chief of the Jefferson County Police Department, filed this action in Jefferson Circuit Court for forfeiture under KRS 218A.270.[2] The sum of $193,387.67 was seized when the criminal defendants were arrested on March 1, 1982, on drug trafficking charges. Shortly thereafter while the defendants were incarcerated, the de-

APPENDIX
p.20

fendants William and Mona Ragland signed a document entitled "assignment," purportedly assigning all of their rights, title and interest to funds totaling $306.278.00 to the law firm of G. Murray Turner.

1.Bobby Crouch, the present Chief of Police, has been substituted as plaintiff.

2.Repealed effective July 13, 1984. KRS 218A.410, witn similar provisions, was enacted in its place.

In March, 1984, the Internal Revenue Service intervened, and on March 12, 1984, after a bench trial, a Jefferson Circuit Judge Edwin Schroering, Jr., entered findings of fact and concluded that the sum of $197,387.67 had been forfeited to the Jefferson County Police, "subject to any interest in said property as may be held by G. Murray Turner, assignee of James William and Mona F. Ragland, and by the United States of America (Internal Revenue Service)." The matter was set for a hearing to determine what interest, if any, that Turner or the IRS may have. That hearing was never concluded, however, as the case was removed to this Court by the United States (IRS) on December 27, 1984.

APPENDIX
p. 22

On April 1, 1988, after holding a conference with the parties, the Court issued a memorandum and order directing the parties to address the following issues:

1. Whether the Kentucky forfeiture statute, KRS 218A.270(1)(f), or the federal forfeiture statute, Title 21 U.S.C. section 881(a)(6), is applicable.

2. Whether any order or judgment of the Jefferson Circuit Court prior to removal is res judicata.

3. The order of priority of the claims of Turner and the Jefferson County Police Chief.

4. The order of priority of the claims of Turner and the Internal Revenue Service.

APPENDIX
p. 23

5. The validity of the assignment by James W. Ragland to Turner.

Turner is the only party who has not filed a memorandum. The IRS concedes that Title 26 U.S.C. section 6323(i)(3) of the Internal Revenue Code creates an absolute priority in favor of the County Police Chief, Bobby Crouch, as against the federal tax lien.

"(3) Forfeitures.--For purposes of this subchapter, a forfeiture under local law of property seized by a law enforcement agency of a State, county, or other local governmental subdivision shall relate back to the time of seizure, except that this paragraph shall not apply to the extent that under local law the holder of an intervening claim or interest would have priority over the interst of the State, county, or other local governmental subdivision in the property."

APPENDIX
p. 24

The IRS concedes that "should the Court hold that the funds were properly forfeited to the Jefferson County Police Chief under Kentucky law, and that the Jefferson County Police Chief has priority over Turner in those funds, the case is over. The United States claims no priority in these funds as against the plaintiff [Crouch]." (Memorandum of United States, p.2.)

An assignee takes only the interest of his assignor. Whayne Supply Co., Inc. v. Morgan Construction Co., Inc., Ky., 440 S.W.2d 779 (1969); United States v. $11,580.00 in U.S. Currency, 454 F.Supp. 376 (M.D.Fla. 1978). It is undisputed that the assignment, or security interest, whichever it may be determined to be, occurred after the seizure of the property while the crimi-

nal defendants were incarcerated. The leading case of United States v. Stowell, 133 U.S. 1, 10 S.Ct. 244, 247 (1890), is dispositive:

"The next question to be determined is from what time the forfeiture takes effect. By the settled doctrine of this court, whenever a statute enacts that upon the commission of a certain act specific property used in or connected with that act shall be forfeited, the forfeiture takes effect immediately upon the commission of the act; the right to the property then vests in the United States, although their title is not perfected until judicial condemnation; the forfeiture constitutes a statutory transfer of the right to the United States at the time the offense is committed; and the condemnation, when obtained, relates back to that time, and avoids all intermediate sales and alienations, even to purchasers in good faith."

In United States v. One 1975 Chevrolet, Etc., 495 F.Supp. 737 (W.D. Mich. 1980), Stowell was cited with approval. That case involved facts similar to the one before this Court, in

that the criminal defendant attempted to make an assignment of his previously seized Blazer truck, to his attorney after his arrest, for "past legal services and future legal services." The Court quoted Stowell and held the Blazer to have been forfeited at the time is was improperly used. See also Calero-Toledo v. Pearson Yacht Leasing Co., 416 U.S. 663, 94 S.Ct. 2080 (1974); Simons v. United States, 541 F.2d 1351 (9th Cir. 1976); State of Texas v. Donoghue, 302 U.S. 284, 290, 58 S.Ct. 192, 195 (1937) (Cardozo, J. dissenting).

> Forfeiture of conveyances that have been used--and may be used again--in violation of the narcotics laws fosters the purposes served by the underlying criminal statutes, both by preventing further illicit use of the conveyance and by imposing an economic penalty, thereby rendering illegal behavior unprofitable.

Calero-Toledo, 418 U.S. at 686, 94 S.Ct. at 2093-2094.3

It is apparent, therefore, that the money had been properly forfeited and seized prior to the "assignment" to Turner, and that the criminal defendant then had no funds to assign, under Stowell, supra.

As for the issue suggested by Turner, dealing with the res judicata effect of Judge Schroering's opinion on March 14, 1984, and May 8, 1984, Title 28 U.S.C. section 1450 provides, in pertinent part, that "[A]ll injunctions, orders, and other proceedings had in such action prior to removal shall remain in full force and effect until

---

3. There is some authority which mitigates the harshness of the Stowell rule by holding that title is transferred to the government at the time of seizure instead of the time of forfeiture. State of Idaho v. One 1974 Green Targa Porsche Automobile, 112 Idaho 432, 732 P.2d 670 (1986).

dissolved or modified by the district court." The federal court "takes the case up where the state court left off." Granny Goose Foods, Inc. v. Brotherhood of Teamsters and Auto Truckdrivers, 415 U.S. 423, 94 S.Ct. 1113, 1122 (1974), quoting from Duncan v. Gegan, 101 U.S. 810, 812, 25 L.Ed. 875 (1880). Once a case has been removed, federal law governs the future proceedings. (Granny Goose, supra. Because the IRS concedes that it has no interest in the money as against a valid state forfeiture, it is unnecessary to resolve the 3-way dispute by discussing priorities, filing, and notice requirements, which the United States and Bobby Crouch have addressed briefly in their memoranda.

It is the holding of this Court that all interest in the funds were vested in the Chief of the Jefferson County Police prior to the execution of the agreement between Turner and the Raglands.

An appropriate order has been entered this 7th day of June, 1988.

/s/THOMAS A. BALLANTINE, JR.
United States District Judge

copies to counsel

APPENDIX
p. 30

NO. 88-5768
UNITED STATES COURT OF APPEALS
FOR THE SIXTH CIRCUIT

ORDER

LEON E. JONES, SR.

Plaintiff-Appellee

UNITED STATES OF AMERICA

Intervenor - Plaintiff

V.

ONE HUNDRED NINETY-THREE THOUSAND THREE HUNDRED EIGHTY-SEVEN DOLLARS AND SIXTY-SEVEN CENTS - $193,387.67; JAMES W. RAGLAND; MONA RAGLAND; ROBIN RAGLAND; LARRY SUDDETH; ROBERT LYONS

Defendants

G. MURRAY TURNER, MULHALL, TURNER & HOFFMAN, formerly known as Mulhall, Hoffman. Clay & Triplett

Defendant-Appellant

BEFORE: JONES and NORRIS, Circuit Judges; TODD, District Judge.*

This cause having come on to be heard upon the record, the briefs and

APPENDIX
p. 31

the oral argument of the parties, and upon due consideration thereof,

The court finds that no prejudicial error intervened in the judgment and proceedings in the district court, and its is therefore ORDERED that said judgment be and it hereby is affirmed.

ENTERED BY ORDER OF THE COURT

/s/Leonard Green, Clerk

*

The Honorable James D. Todd, District Judge for the Western District of Tennessee, sitting by designation.

NOT RECOMMENDED FOR FULL TEXT PUBLICATION - Six Circuit Rule 24 limits citation to specific situations. Please see Rule 24 before citing in a proceeding in a court in the Sixth Circuit. If cited, a copy must be served on other parties and the Court. This notice is to be prominently displayed if this decision is reproduced.

Filed: August 23, 1990

APPENDIX
p. 32